IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4467 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL GANDABHAI AMBALAL - Petitioner(s)

Versus

DY SECRETARY & 3 - Respondent(s)

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Appearance :

MR JITENDRA M PATEL for Petitioner(s) : 1,
MRS.FALGUNI PATEL, AGP for Respondent(s) : 1,
MR PRAKASH K JANI for Respondent(s) : 2,
MR PV HATHI for Respondent(s) : 3,
MR HR PRAJAPATI for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 29/11/2005

ORAL JUDGMENT

In the present petition, the petitioner has challenged the order dated 25th May, 1998 passed by the Deputy Secretary, Panchayat, Rural Housing and Rural

Development Department, Government of Gujarat. By the said order, revision application filed by one Shri Thakore Manaji Ramtuji, respondent No.4 herein, against the order passed by the Appeal Committee of the District Panahcyat came to be allowed.

2. The petitioner was earlier elected as Sarpanch of village Mokhasan, Taluka Kalol, Dist: Mehsana. He was so elected in the year 1992. Earlier, the predecessor in title of the petitioner had applied and granted permission for construction on the land belonging to the family. The said permission was granted on 22.1.66. Since the permission was not according to the application made by the predecessor in title of the petitioner, further proceedings were carried before the Taluka Panchayat and the Taluka Panchayat was pleased to allow the appeal of the party, a copy of which order is produced at Annexure C to the petition.

3. Respondent No.4 herein approached the Appeal Committee of the Mehsana District Panchayat and complained that the petitioner had passed the resolution while discharging his duty as Sarpanch and plotted out plots Sr. Nos.413 and 414 which are forming part of the

Government lands. Such an application was, however, rejected by the Appeal Committee by the order dated 17.6.96. Respondent No.4 therefore, filed a revision application before the State Government. State Government allowed the revision application filed by respondent No.4 and by the impugned order dated 25.5.98 provided that the procedure carried out by the petitioner being illegal, he should be proceeded against in accordance with the rules.

4. Learned advocate Shri Patel appearing for the petitioner submitted that the petitioner had not plotted out any portion of plots of Sr.No.413 and 414 of village and that he does not occupy any portion of such land and in fact the lands in question were earlier given to the members of Scheduled Caste as well as for Milk Cooperative. It is also part of the record that portion of the land is occupied by persons from Panchal community since many years and in any case the petitioner had not breached any provisions of law nor had he dealt with the said land while he was discharging his duty as Sarpanch. Learned advocate for the petitioner Shri Patel pointed out that earlier proceedings to remove the petitioner as Sarpanch was initiated by the District Development

Officer, however, subsequently by order dated 9.10.1995, the District Development Officer was pleased to drop the proceedings holding that the petitioner has not committed any breach of law with respect to plots No.413 and 414. He also pointed out that the Additional Development Commissioner was pleased to confirm the order passed by the District Development Officer. He, therefore, submitted that the State Government erred in passing the order under challenge.

5. Learned AGP Mrs. Falguni Patel supported the order passed by the Government and contended that the petition should be rejected.

6. Having heard the learned advocates and upon perusal of the material on record, it would appear that the case of the petitioner has all throughout been that he is occupying his building which is constructed on the land belonging to him and his family and that he had neither encroached any portion of the land in plot No.413 and 414 nor had he plotted out or in any manner dealt with the said plots while he was the Sarpanch of the village. He had also produced material on record which would, prima facie, establish these facts. The State

Government, however, on the basis of a map prepared and produced by the new Sarpanch of the village came to the conclusion that the petitioner had put up construction upto plinth level in portion of plot Nos.413 and 414 and that these plots were alloted to other persons. There is nothing on record to uphold such a conclusion of the Government. Merely upon a map produced by the Sarpanch, it could not have been concluded against the petitioner that he has encroached on the Government land. In the impugned order also, it is recorded that no resolution has been passed by the Panchayat. If the petitioner has occupied any Government land, he is liable to be evicted of such an encroachment. However, no order can be passed without there being material on record and definite conclusion in this regard. The order passed by the State Government is likely to create confusion as the implications thereof are ambiguous. The order, therefore, cannot be sustained. The same is quashed and set aside.. In view of the quashing of the order dated 25.5.98, the subsequent show cause notice issued by the Panchayat dated 30.5.98 and 5.6.98 are also quashed and set aside. Irrespective of this order, however, if there is any material before the authorities to conclude that the petitioner has encroached on public land, it will be

open for the respondents to proceed in accordance with law. Subject to the above observations, the petition is allowed as above. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)